

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROSHAWN RANDALL, an  
individual, and BAD DAWG, INC.,  
an Idaho corporation,

Plaintiffs,

v.

FEDEX GROUND PACKAGE  
SYSTEM, INC., a Delaware  
corporation,

Defendant.

NO. 2:23-CV-0095-TOR

ORDER GRANTING DEFENDANT'S  
MOTION TO COMPEL  
ARBITRATION

BEFORE THE COURT are Defendant's Motion to Compel Arbitration (ECF No. 9) and Motion to Dismiss (ECF No. 10). These matters were submitted for consideration with oral argument on July 19, 2023. Courtney A. Hall, Alayna M. Piwonski, and Kelly E. Konkright appeared on behalf of Plaintiffs. William G. Whitman, IV and Gregory M. Monaco appeared on behalf of Defendant. The Court has reviewed the record and files herein, heard from counsel, and is fully informed. For the reasons discussed below, Defendant's Motion to Compel

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL  
ARBITRATION ~ 1

1 Arbitration (ECF No. 9) is **granted** and Defendant’s Motion to Dismiss (ECF No.  
2 10) is **denied as moot**.

### 3 **BACKGROUND**

4 On March 17, 2023, Plaintiffs filed a Complaint in Spokane County  
5 Superior Court, alleging the following causes of action: (1) race discrimination /  
6 disparate treatment; (2) intentional infliction of emotional distress; and (3)  
7 negligent infliction of emotional distress. *See id.* On April 7, 2023, Defendant  
8 removed the action to this Court. On April 28, 2023, Defendant filed the present  
9 motions, which are fully briefed. ECF Nos. 9, 10, 13, 15, 17, 20. The following  
10 facts are drawn from Plaintiffs’ Complaint, which are accepted as true for purposes  
11 of the present dispute. *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir.  
12 2012).

13 Plaintiff Roshawn Randall is an Idaho citizen and Plaintiff Bad Dawg, Inc.  
14 (“BDI”) is an Idaho corporation doing business in Spokane County, Washington.  
15 ECF No. 1-2 at 2, ¶¶ 1.1–1.2. Mr. Randall has been the owner of BDI since  
16 October 2019. *Id.*, ¶ 1.3. Defendant FedEx is a Delaware corporation doing  
17 business in Spokane County, Washington. *Id.* at 2–3, ¶ 1.4. FedEx employs  
18 “independent service providers” (“ISPs”) who are third-party delivery service  
19 companies that deliver packages to customers. *Id.* at 3, ¶ 3.3  
20

1 Prior to March 2022, BDI operated as an ISP for FedEx, providing package  
2 delivery services from a designated location to customers in contractually defined  
3 areas within Spokane County, Washington for more than twenty years. *Id.* at 3–4,  
4 ¶ 3.4. BDI and FedEx’s business relationship was governed by an Independent  
5 Service Provider Agreement. *Id.* at 4, ¶ 3.5.

6 On or about October 3, 2020, BDI and FedEx entered into a new ISP  
7 Agreement. *Id.*, ¶ 3.6. Under the Agreement, the parties had a duty to act with  
8 fairness and in good faith in conducting their business. *Id.*, ¶ 3.7. The Agreement  
9 includes provisions setting forth BDI’s exclusive right to provide transportation  
10 services for packages from a Spokane County FedEx Station to specific addresses  
11 located in the Contracted Service Area. *Id.*, ¶ 3.8.

12 Under Section 1.1(H), FedEx could redefine BDI’s Contracted Service Area,  
13 but FedEx was required to “undertake a good faith effort to ensure that a redefined  
14 [Contracted Service Area] is reasonably comparable in terms of stops, geographic  
15 proximity (in relation to the [FedEx] Station or point(s) at which packages are  
16 tendered), and projected net contract revenue.” *Id.*, ¶ 3.9.

17 Under Section 5 of the Attachment A-2 to Schedule A, BDI agreed to  
18 achieve a daily “Inbound Local Service” level of “at least 98.5 percent of the daily  
19 average Inbound Local Service level attained by either the [FedEx] Station or the  
20 ‘[FedEx] District,’ whichever is higher, in each [FedEx] Station out of which BDI

1 provides contracted services.” *Id.* at 4–5, ¶ 3.10. The parties agreed “to conduct  
2 all business activities safely and professionally, with honesty and integrity, and in  
3 accordance with the Applicable Law, at all times.” *Id.* at 5, ¶ 3.11.

4 Prior to October 2019, BDI was owned by a third-party and operated under  
5 the name Black Eye Enterprises, Inc. *Id.* at 5, ¶ 3.12. Black Eye had a nearly  
6 twenty-year relationship with FedEx, providing delivery services to FedEx as an  
7 ISP. *Id.*, ¶ 3.13. In or around October 2019, Mr. Randall purchased Black Eye and  
8 changed the name of the company to BDI. *Id.*, ¶ 3.14. In doing so, Mr. Randall  
9 became the only owner of an ISP provider of FedEx operating in Spokane County,  
10 Washington and Kootenai County, Idaho who is a person of color. *Id.*, ¶ 3.15. All  
11 other ISP owners for FedEx in these areas are Caucasian. *Id.*, ¶ 3.16.

12 Following Mr. Randall’s acquisition of BDI, FedEx began to treat BDI and  
13 Mr. Randall differently than all other ISPs and their owners. *Id.* at 6, ¶ 3.17. At  
14 the time of Mr. Randall’s purchase of BDI, the station manager for the FedEx  
15 station out of which BDI operated regularly made racially derogatory comments  
16 about people of color and specifically about Mr. Randall. *Id.*, ¶ 3.18. The station  
17 manager did not like Mr. Randall because of Mr. Randall’s skin color. *Id.* The  
18 station manager told others at FedEx he was “going to go pick on BDI” on multiple  
19 occasions. *Id.*, ¶ 3.19. The station manager treated BDI and Mr. Randall less  
20

1 favorably than all other ISPs and their owners/employees and this treatment  
2 continued even after the station manager left FedEx. *Id.*, ¶¶ 3.20, 3.21.

3 At the end of 2021, the station manager left FedEx and a new station  
4 manager was promoted. *Id.*, ¶ 3.22. This new station manager previously worked  
5 under the former station manager and participated in the discriminatory treatment  
6 of Mr. Randall and BDI. *Id.*, ¶ 3.22.

7 Prior to Mr. Randall's purchase of BDI, FedEx made its employees at the  
8 FedEx Station available to all ISPS – including BDI – for the purpose of  
9 organizing and loading packages onto delivery trucks. *Id.* at 7, ¶ 3.25. After Mr.  
10 Randall took over ownership of BDI, FedEx ceased making its employees  
11 available to BDI for loading assistance and FedEx employees refused to assist  
12 organize and/or load packages onto BDI's delivery trucks. *Id.*, ¶ 3.26. FedEx  
13 continued to provide loading assistance to all other ISPs at the FedEx Station. *Id.*,  
14 ¶ 3.27. Consequently, BDI drivers organized and loaded BDI delivery trucks  
15 alone, resulting in a substantially longer loading process. *Id.*, ¶¶ 3.28, 3.29. BDI  
16 drivers began to consistently leave the FedEx Station sixty to ninety minutes later  
17 than the other ISPs that received loading assistance from FedEx. *Id.*, ¶ 3.29. BDI  
18 drivers that left later resulted in packages not arriving on time, resulting in BDI  
19 paying its employees overtime to cover the time it took to deliver packages, nearly  
20 doubling its payroll. *Id.*, ¶¶ 3.30, 3.32. Mr. Randall and BDI made numerous

1 requests for FedEx to resume loading assistance, but FedEx either refused or  
2 ignored these requests. *Id.*, ¶ 3.31.

3 On or around January 2021, BDI's average daily "Inbound Local Service"  
4 level fell below 98.5 percent. *Id.* at 8, ¶ 3.33. Previously, BDI consistently  
5 maintained a daily level of at least 98.5 percent in compliance with the ISP  
6 Agreement. *Id.*, ¶ 3.34.

7 On or around October 2021, FedEx informed BDI that it would significantly  
8 reduce BDI's Contracted Service Area and indeed reduced the Area by nearly half.  
9 *Id.*, ¶ 3.35. FedEx removed BDI's service area in downtown Coeur d'Alene and  
10 Post Falls, Idaho, leaving BDI with the remaining part of the Contracted Service  
11 Area which was rural and mountainous – and thus, more difficult and costly to  
12 service for BDI. *Id.*, ¶ 3.37. As a result, BDI's performed fewer deliveries and  
13 received less compensation. *Id.*, ¶ 3.36.

14 In justifying the reduction of the Contracted Service Area, FedEx cited in  
15 part to BDI's average daily Inbound Local Service Level that fell below 98.5  
16 percent for a period of time. *Id.* at 9, 3.39. While the average daily drop could be  
17 attributed to FedEx's decision to no longer provide loading assistance, BDI still  
18 maintained an average daily Inbound Local Service level that was higher than  
19 other ISPs in the area. *Id.*, ¶ 3.41. However, FedEx did not alter or significantly  
20 reduce other ISPs Contracted Service Areas for this reason. *Id.*, ¶ 3.42.

1 In the aftermath of this decision, FedEx informed BDI that it could get the  
2 entire Contracted Service Area back if it raised its daily Inbound Local Service  
3 level above 98.5 percent. *Id.*, ¶ 3.43. BDI achieved this but FedEx continued to  
4 refuse to return the entire Contracted Service Area to BDI. *Id.*, ¶ 3.44.

5 As a second reason for reducing the area of service, FedEx informed BDI it  
6 was “too big” for the Contracted Service Area. *Id.*, ¶ 3.45. However, other ISPs  
7 making deliveries were just as large or larger than BDI and these ISPs did not have  
8 their Contracted Service Areas reduced. *Id.*, ¶ 3.46. BDI’s former Contracted  
9 Service Area is currently divided between other ISPs who are just as large or larger  
10 than BDI, and none of which are owned by an African American. *Id.* at 10, ¶ 3.47.

11 In the summer of 2021, BDI and FedEx began to negotiate a new contract as  
12 was custom practice where the Agreement was set to expire in October 2021. *Id.*  
13 at 10, ¶ 3.48. Negotiations stalled when FedEx demanded, among other things,  
14 that BDI agree to terms that would ensure BDI’s financial failure. *Id.*, ¶ 3.49. For  
15 example, FedEx refused to return the entire Contracted Service Area to BDI under  
16 the new agreement. *Id.*, ¶ 3.50. Additionally, FedEx insisted that BDI commit to a  
17 projected net contract revenue in a new agreement that was lower than it had ever  
18 been previously – all while making it more difficult for BDI to be profitable by  
19 significantly reducing its Contracted Service Area and refusing to assist BDI to get  
20 its trucks loaded. *Id.*, ¶ 3.51. FedEx extended the Agreement terms while the

1 parties continued to negotiate, with the last of the extensions lasting until March  
2 2022. *Id.*, ¶ 3.52. While BDI believed a new agreement would be reached, FedEx  
3 informed BDI that it would not renew the Agreement with BDI in March 2022.  
4 *Id.*, ¶ 3.53. BDI was left with a host of expenses which it was forced to incur by  
5 FedEx pursuant to the Agreement and BDI's performance of services as an ISP.  
6 *Id.*, ¶ 3.54. FedEx's treatment was to put BDI effectively out of business as a  
7 delivery service company by FedEx. *Id.* at 11, ¶ 3.56.

## 8 DISCUSSION

### 9 I. Motion to Compel Arbitration

10 Defendant moves to compel Plaintiffs to arbitration under the terms of the  
11 ISP Agreement. ECF No. 9. Plaintiffs oppose arbitration on several grounds.  
12 ECF No. 13. The Court addresses each issue in turn.

13 The Federal Arbitration Act ("FAA") makes agreements to arbitrate "valid,  
14 irrevocable, and enforceable, save upon such grounds as exist at law or in equity  
15 for the revocation of any contract." 9 U.S.C. § 2. The FAA reflects "both a liberal  
16 federal policy favoring arbitration . . . and the fundamental principle that  
17 arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S.  
18 333, 339 (2011) (internal citations and quotation marks omitted). Thus, "courts  
19 must place arbitration agreements on an equal footing with other contracts . . . and  
20 enforce them according to their terms." *Id.* (internal citation omitted).



1 Generally, the court determines two threshold issues on a motion to compel  
2 arbitration: (1) whether there is an agreement to arbitrate between the parties and  
3 (2) whether the agreement covers the dispute. *Brennan v. Opus Bank*, 796 F.3d  
4 1125, 1130 (9th Cir. 2015). The “party seeking to enforce an arbitration agreement  
5 bears the burden of showing that the agreement exists and that its terms bind the  
6 other party.” *Glow v. Cent. Pac. Mort. Corp.*, 560 F. Supp. 2d 972, 978 (E.D. Cal.  
7 2008). This burden is “substantial.” *Id.* at 979. “[T]here should be an express,  
8 unequivocal agreement to that effect.” *Three Valleys Mu. Water Dist. V. E.F.*  
9 *Hutton & Co., Inc.*, 925 F.2d 1136, 1141 (9th Cir. 1991) (citation omitted). In  
10 determining the existence of an arbitration agreement, state-law principles of  
11 contract interpretation apply, and courts should give “due regard to the federal  
12 policy in favor of arbitration by resolving ambiguities as to the scope of arbitration  
13 in favor of arbitration.” *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049  
14 (9th Cir. 1996). Courts view the evidence in the light most favorable to the  
15 nonmoving party because an order compelling arbitration “is in effect a summary  
16 disposition of the issue of whether or not there had been a meeting of the minds on  
17 the agreement to arbitrate.” *Hansen v. LMB Mortgage Service, Inc.*, 1 F.4th 667,  
18 670 (9th Cir. 2021) (citation omitted).

#### 19 **A. Agreement to Arbitrate**

20 Plaintiffs contend that there is no valid agreement to arbitrate on the grounds

1 that they are exempt as transportation workers and alternatively, that application of  
2 the Pennsylvania Revised Uniform Arbitration Act is contrary to Washington law.  
3 ECF No. 13 at 2.

4 The Federal Arbitration Act (“FAA”) makes agreements to arbitrate “valid,  
5 irrevocable, and enforceable, save upon such grounds as exist at law or in equity  
6 for the revocation of any contract.” 9 U.S.C. § 2. The FAA reflects “both a liberal  
7 federal policy favoring arbitration ... and the fundamental principle that arbitration  
8 is a matter of contract.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339  
9 (2011) (internal citations and quotation marks omitted). Thus, “courts must place  
10 arbitration agreements on an equal footing with other contracts ... and enforce  
11 them according to their terms.” *Id.* (internal citation omitted).

12 In determining whether to compel arbitration, generally the court must  
13 determine two threshold issues: (1) whether there is an agreement to arbitrate  
14 between the parties and (2) whether the agreement covers the dispute. *Brennan v.*  
15 *Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015). Here, Plaintiffs do not challenge  
16 the scope of the agreement. ECF No. 13 at 2.

17 Section 1 of the FAA exempts “contracts of employment of seamen, railroad  
18 employees, or any other class of workers engaged in foreign or interstate  
19 commerce.” 9 U.S.C. § 1. The exemption applies to the “performance of *work* by  
20 *workers*”, including independent contractors. *New Prime Inc. v. Oliveira*, 139 S.

1 Ct. 532, 541 (2019). Transportation workers include those “employed to deliver  
2 goods that originate out-of-state to an in-state destination” regardless of whether  
3 the worker personally travels between states, so long as the goods remain in the  
4 channel of interstate commerce. *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 910  
5 (9th Cir. 2020). Courts that have addressed whether an entity qualifies in a “class  
6 of workers” engaged in foreign or interstate commerce have found that an entity  
7 does not qualify as a transportation worker. *See R&C Oilfield Servs., LLC v. Am.*  
8 *Wind Transp. Grp.*, 447 F. Supp. 3d 339, 347 (W.D. Pa. 2020) (finding  
9 commercial contract between two entities “cannot reasonably be construed as a  
10 contract of employment governing ‘work by workers’”); *Carter O’Neal Logistics,*  
11 *Inc. v. FedEx Ground Package Sys., Inc.*, 2020 WL 13111153, at \*3 (W.D. Tenn.  
12 Mar. 19, 2020) (noting *New Prime* “does not stand for the proposition” that the  
13 exemption applies to corporate entities).

14 Plaintiffs contend that *Citizens United v. FEC*, 558 U.S. 310 (2010) provides  
15 BDI with the same rights as individuals, and as a result, should qualify for the  
16 exemption. However, *Citizens United* is a First Amendment case that has no  
17 apparent application to this case. *See, e.g., Fli-Lo Falcon, LLC v. Amazon.com*  
18 *Inc.*, No. C22-441-RSM-MLP, 2022 WL 4451273, at \*6 (W.D. Wash. Sept. 8,  
19 2022). Plaintiffs request a stay pending the Ninth Circuit’s determination in *Fli-Lo*  
20 *Falcon, LLC v. Amazon, Inc.*, Docket No. 22-35818. However, the law is

1 sufficiently clear from *New Prime* and its progeny that a stay is not warranted.

2 Here, the ISP Agreement was entered between two corporate entities in the  
3 business of fulfilling delivery orders. *See* ECF No. 1-2. BDI is not within a “class  
4 of worker” within the meaning of the Transportation Workers Exemption. *New*  
5 *Prime*, 139 S. Ct. at 541. Additionally, the ISP Agreement does not purport to  
6 cover the work of Mr. Randall as owner of BDI, nor are there any allegations in the  
7 Complaint that he is a transportation worker. *See* ECF No. 1-2. The Court  
8 concludes that the Transportation Worker Exemption does not apply to either  
9 Plaintiff. The Court concludes there is a valid agreement to arbitrate under the  
10 FAA. The Court declines to address the alternative argument applying the  
11 Pennsylvania Revised Uniform Arbitration Act.

## 12 **B. Non-Signatory**

13 Plaintiffs assert that Mr. Randall’s personal claims cannot be compelled to  
14 arbitration because he is not a party to any contract with FedEx. ECF No. 13 at 2–  
15 3. Defendant contends that Mr. Randall must arbitrate his individual claims under  
16 an equitable estoppel theory. *See* ECF No. 9 at 6–7.

17 The FAA “creates substantive federal law regarding the enforceability of  
18 arbitration agreements” but does not “alter background principles of state contract  
19 law regarding the scope of agreements (including the question of who is bound by  
20 them).” *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630 (2009). The parties

1 dispute what state law would apply but both Washington and Pennsylvania  
2 recognize that a non-signatory may be bound by an arbitration provision under an  
3 equitable estoppel theory. *See Griswold v. Coventry First LLC*, 762 F.3d 264,  
4 272–73 (3d Cir. 2014) (citing *Dodds v. Pulte Home Corp.*, 2006 PA Super 268,  
5 909 A.2d 348 (2006)); *Townsend v. Quadrant Corp.*, 173 Wash. 2d 451, 461  
6 (2012).

7 In Pennsylvania, non-signatories may be compelled to arbitrate “when there  
8 is an obvious and close nexus between the non-signatories and the contract or the  
9 contracting parties.” *Dodds*, 909 A.2d at 351. In Washington, non-signatories  
10 may be compelled to arbitrate if the person claims “the benefits of a contract while  
11 simultaneously attempting to avoid the burdens that contract imposes.” *Townsend*,  
12 173 Wash. 2d at 461.

13 Here, the alleged conduct has an obvious and close nexus to the contract  
14 terms and Plaintiffs are seeking the benefits of the ISP Agreement. *See* ECF No.  
15 1-2. The claims directly relate to FedEx’s obligations and actions under the ISP  
16 Agreement, including redefining BDI’s Contracted Services Area and termination  
17 of the ISP Agreement. *See id.* at 11, ¶ 4.3. Moreover, Plaintiffs seek damages that  
18 include lost pay under the contract. *Id.*, ¶ 4.4. Finally, the Court notes BDI  
19 already filed a AAA arbitration against FedEx, wherein Mr. Randall joined as a  
20 nominal claimant, for claims of breach of contract and contingent discrimination

1 claims that are raised in this Complaint. ECF No. 9 at 4–5. Under these  
2 circumstances, the Court finds that Mr. Randall is equitably estopped from  
3 avoiding the arbitration provision under the ISP Agreement regardless of the  
4 applicable state law. Therefore, the Court compels Plaintiffs to arbitration in full.  
5 Finally, the Court denies Defendant’s Motion to Dismiss.

### 6 **C. Stay**

7 Under the FAA, the court should stay proceedings when an issue involved in  
8 the lawsuit is subject to arbitration. 9 U.S.C. § 3. However, the Ninth Circuit held  
9 that a court has discretion to dismiss the action if all claims are arbitrable.

10 *Nagrampa v. MailCoups*, 469 F.3d 1257, 1276 (9th Cir. 2006) (en banc) (stating  
11 the court “should stay or dismiss the action pending arbitration”); *Sparling v*  
12 *Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (finding the district  
13 court “acted within its discretion when it dismissed [the plaintiff’s] claims”).

14 The Court finds dismissal warranted where all issues will be determined by  
15 an arbitrator. No resources would be saved if the case were to remain on the  
16 docket until arbitration concludes.

### 17 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 18 1. Defendant’s Motion to Compel Arbitration (ECF No. 9) is **GRANTED**.
- 19 2. Defendant’s Motion to Dismiss (ECF No. 10) is **DENIED as moot**.

1           3. The Court **ORDERS** the parties to conduct arbitration pursuant to the  
2           ISP Agreement. This case is **DISMISSED**.

3           The District Court Executive is directed to enter this Order, furnish copies to  
4 counsel, and **CLOSE** the file.

5           DATED July 19, 2023.



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*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge